

DEPARTMENT OF SOCIAL SERVICES

44 P Street, M.S. 19-31, Sacramento, CA 95814

July 26, 1983



ALL COUNTY INFORMATION NOTICE NO. 1-82-83

TO: ALL COUNTY WELFARE DEPARTMENTS
ALL PUBLIC AND PRIVATE ADOPTION AGENCIES
ALL SDSS ADOPTION DISTRICT OFFICES

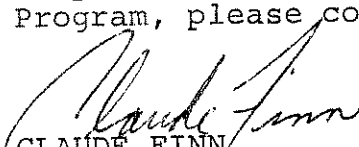
SUBJECT: QUESTIONS AND ANSWERS ON REGULATIONS FOR THE ADOPTION
ASSISTANCE PROGRAM AND INTERLOCUTORY DECREE OF ADOPTION
PROCESS

REFERENCE: ALL COUNTY INFORMATION NOTICE I-125-82

Many questions have been raised regarding the Adoption Assistance Program. We have provided you with a compilation of these questions and our responses to them.

Currently, the Adoptions Branch is in the process of reviewing the entire Adoption Assistance Program. During this process, we will be contacting county and public agencies within the near future to request program concerns and information.

If you have any questions concerning the Adoption Assistance Program, please contact your Adoptions Consultant.


CLAUDE FINN

Deputy Director

Attachment

cc: CWDA

ADOPTION ASSISTANCE PROGRAM

Questions on Policies and Procedures

1. Will benefits to federally eligible children differ in any way from benefits to federally ineligible children?

Answer: No. AAP and Medi-Cal benefits for federally eligible and federally ineligible children will be identical.

2. Can AFDC-FC payments be made for a child after adoptive placement before completion of the adoption?

Answer: Yes. AFDC-FC payments may be made after placement and before an interlocutory or final decree of adoption is granted if the child meets all eligibility criteria for AFDC-FC, is placed in an eligible facility and continues to meet all FC requirements. If the child receives AFDC-FC, the child cannot also receive AAP for the same period.

3. May a petition for an interlocutory decree of adoption be filed before the child is living with the petitioner(s)?

Answer: Yes. The adoption agency and prospective parents may petition the court for an interlocutory decree of adoption before the child is actually residing in the home of the petitioners; however, the decision rests with the court as to when and under what circumstances the decree is granted.

4. Will the Department provide a sample placement agreement form or issue a statewide placement agreement form, in accordance with the new regulations?

Answer: The development of a statewide placement agreement form is now in process.

5. The California Administrative Code requires the agency to provide the same services during the interlocutory period as it would have provided during a post-placement supervisory period in a non-interlocutory case. What recourse does the agency have if the adoptive family refuses to permit required visits, or refuses to share information about the adoptive placement, or refuses the worker access to the child? Since the interlocutory decree gives the petitioner(s) custody of the child, and removes custody from the agency, how can the agency provide services?

Answer: The adoption agency's recourse, in the event that the petitioner(s) refuse to cooperate, is to advise the court of the issue and request advice on how to proceed. The agency has no unilateral right to remove the child during the period of the interlocutory decree; only the court may sanction such a removal based on information from the agency.

6. If the child is a dependent of the court and an interlocutory decree of adoption is to be obtained, at what point should dependency be dismissed? Is there any conflict between the authority of the juvenile court and that of the court granting the interlocutory decree? Can the child be a court dependent during the interlocutory period?

Answer: The issuance of an interlocutory decree of adoption has a separate legal basis than juvenile court dependent, and there is no basic conflict. Adoptions Branch recommends that the adoption agency file a motion for the termination of juvenile court dependency at the time the interlocutory decree of adoption is granted.

7. Since the birth certificate will not be amended until after the interlocutory decree becomes a final decree of adoption, what if an amended birth certificate is needed earlier (e.g., for a passport)?

Answer: The process for the issuance of an amended birth certificate remains the same; the amended birth certificate is issued following completion of the adoption.

8. If a child's foster parents desire to adopt and are approved for a particular child linked to AAP (over the age of 3 years), but the child is actually easy to place if he/she were removed from foster care and placed for adoption elsewhere, is this family and child eligible? The child would not be hard to place but the foster family cannot afford to adopt without financial assistance.

Answer: The intent of the Adoption Assistance Program is to place children who are hard to place in adoptive homes. It does not require the uprooting of a child from an established relationship. For this reason, there is no requirement for a search for families willing to adopt without a subsidy if the child has formed emotional ties to foster parent(s) or others while in their care.

9. Would it be appropriate to include in an adoptive placement agreement a statement that the family agrees to accept services during the interlocutory period? Would such an agreement be enforceable?

Answer: Yes. The adoptive placement agreement is the basis of the procedure by which the interlocutory decree is granted. If the adoptive parent(s) fail to abide by the terms of the agreement, the agency retains the option of informing the court regarding non-compliance with the agreement's stipulations. If necessary, the agency may request that the court rescind the interlocutory decree of adoption.

10. Could the agency and family jointly petition for an interlocutory decree of adoption that would take effect only upon certain conditions (e.g., compliance by the family with expectations, conditions or requirements of the agency)? In other words, can an interlocutory decree of adoption mandate any condition other than the passage of time for it to become final?

Answer: No. An interlocutory decree of adoption is unconditional. Any conditions attached to the placement of a child for adoption should be reported to the court at the time of the decree's issuance. In the event of non-compliance by the adoptive family, the agency may seek rescission of the decree.

11. Will the final decree of adoption be a separate document from the interlocutory decree? If so, how will it be obtained and at what expense?

Answer: The procedure for the issuance of an interlocutory decree of adoption will involve the generation of a document notifying all parties to the adoption that the interlocutory decree has been granted. A second document will be generated which informs all parties that the adoption has become final. The documents are issued by the court clerk and at no additional expense to the parties to the adoption.

12. If the adoption agency believes the child is in immediate danger during the period of the interlocutory, how should this be handled?

Answer: The adoption agency should make an immediate referral to the appropriate Child Protective Services unit and seek rescission of the interlocutory decree of adoption.

13. In the recertification process, there is a limit of three days after completion of the recertification process in which the agency must prepare and send the payment instructions form. When does the three day period begin?

Answer: The three day period begins when all of the necessary steps have been completed as follows:

- (a) the adoption agency (parent(s)' agency in the event of a co-operative placement) has received the adoptive parent(s)' recertification form,
- (b) has determined whether or not changes in the amount of benefits are necessary, and
- (c) has obtained the concurrence of the adoptive parent(s) if this is necessary.

14. Will forms completion instructions be added to the reverse of all AAP forms?

Answer: At present instructions are not planned but if the need develops, they will be considered later.

15. How is the Adoption Assistance Program benefits level determined for a child who never received AFDC-FC? An example would be a child who received SSI-SSP rather than AFDC-FC prior to adoptive placement.

Answer: The appropriate amount would be determined by utilizing the rate which would otherwise be required had the child been placed in foster care. The AAP benefit level may equal this amount but may not exceed it.

16. What is the legal relationship between the interlocutory decree of adoption and the Indian Child Welfare Act? Specifically, what is the last date that the parent of an Indian child may change his/her mind and reclaim the child? If it is the date that the decree becomes final, who is responsible for informing the court that the decree should be rescinded in the event that the child is reclaimed during the interlocutory period?

Answer: The Indian Child Welfare Act provides that the parents of an Indian child may withdraw a relinquishment or voluntary consent to adoption at any time prior to the entry of the final decree of adoption. The agency should inform the court at the time of the petition for the interlocutory decree that the child is subject to the provisions of the Indian Child Welfare Act. In the event that the Indian parent rescinds the relinquishment or withdraws consent to the adoption before it becomes final, the agency should inform the court that the Indian parent wishes to reclaim the child.

17. When should the adoption agency collect its fees when the child is placed for adoption pursuant to an interlocutory decree of adoption?

Answer: California Civil Code Section 225p allows the agency to require payment of adoption fees at the time of filing a favorable report in the superior court. When a child is placed for adoption pursuant to an interlocutory decree, the report is filed at the time of the petition for the decree.

18. In the case of a child not considered hard to place at the time of adoptive placement, but who, prior to the finalization of the adoption, is discovered to have a condition making him/her hard to place, is this child eligible for AAP without a search for families willing to adopt the child without a subsidy?

Answer: Yes, if the child has formed significant emotional ties with the adoptive parent(s) while in placement.

19. If a child from out of state is placed with a California family, and the other state has no Adoption Assistance Program or other adoption subsidy, may California AAP be paid for the child?

Answer: No. The only way the child would be eligible for California AAP is through an action which places the child under the care and control of a California adoption agency (relinquishment, involuntary termination of parental rights or commitment to the Department pursuant to Civil Code Section 226(c) and re-adoption).

20. When a foster family is adopting and there is a transfer from AFDC-FC to AAP, should the effective date be the first of the month or is it necessary to go back to an intra-month date?

Answer: Foster care payments cannot be paid for a child after the adoption is granted. Unless the family agrees to a break in aid, the AAP payment should begin the day the adoption is granted.

21. If a California child is placed for adoption in another state and California is paying AAP, is there an ICPC procedure necessary to request subsequent assistance from the other state in completion of the periodic recertification process?

Answer: No. In the example noted above, it would be unnecessary to invoke ICPC procedures. The family's agency would simply make a request of an adoption agency in the family's state to render the required assistance.